Submitted March 21 1873
Revised Dec 1
Filed

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~422~~. 187

BRIGHAM YOUNG, TRUSTEE IN TRUST OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, PLAINTIFF IN ERROR,

vs.

WILLIAM S. GODBE.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED NOVEMBER 27, 1871.

DEC 9 1872

SUPREME COURT OF THE UNITED STATES.

No. 422.

BRIGHAM YOUNG, TRUSTEE IN TRUST OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, PLAINTIFF IN ERROR,

vs.

WILLIAM S. GODBE.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	3	1
Transcript from district court	6	2
Complaint	8	3
Summons	12	4
Demurrer	14	4
Answer	16	5
Verdict	19	6
Judgment	20	7
Bill of exceptions	21	7
Appeal bond	36	13
Judgment	45	15
Assignment of errors	47	16
Clerk's certificate	51	17

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court of the Territory of Utah, greeting:

Because in the records and proceedings, as also in the rendition of a judgment, in a plea which is in said supreme court, before you, between Brigham Young, trustee in trust of the Church of Jesus Christ of Latter-Day Saints, plaintiff in error, and William S. Godbe, defendant in error, a manifest error hath happened, to the great damages of the said Brigham Young, plaintiff in error, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and
2 according to law and custom of the United States should be done.

Witness the Honorable Solomon P. Chase, Chief Justice of the said Supreme Court of the United States, this 17th day of March, in the year of our Lord 1871, and of the independence of the United States the 95th.

[SEAL.] C. MYRON HAWLEY,
Clerk of the Supreme Court of the Territory of Utah.

(Indorsed:) United States of America. Supreme Court of the United States. Writ of error to the supreme court for the Territory of Utah. Brigham Young vs. William S. Godbe, in error. Filed in the office of the clerk of the supreme court in & for the Territory of Utah, on this 17th day of March, A. D. 1871. C. Myron Hawley, clerk.

3 United States of America to William S. Godbe, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, persuant to a writ of error filed in the clerk's office of the supreme court in and for the Territory of Utah, wherein Brigham Young, trustee in trust of the Church of Jesus Christ of Latter-Day Saints, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable James B. McKeen, chief justice of the supreme court of the Territory of Utah, this 17th day of March, A. D. 1871.

JA'S B. McKEAN,
Chief Justice of the Supreme Court of the Territory of Utah.

We acknowledge service hereof by copy.
Salt Lake City, M'ch 21, 1871.

MARSHALL & CARTER,
Atty's of Godbe.

(Indorsed:) The United States of America. Supreme Court of the United States, in error, to the supreme court of the Territory of Utah.

Brigham Young, trustee in trust of the Church of Jesus Christ of Latter-Day Saints, vs. William S. Godbee, in error. Citation. Filed in the office of the clerk of the supreme court in & for the Territory of Utah, on this 17th day of March, A. D. 1871. C. Myron Hawley, clerk. Snow & Hoge, for pl'ff.

4 TERRITORY OF UTAH:

Supreme Court.

Be it remembered that at a supreme court of the Territory of Utah, held on the thirteenth day of March, 1871, the same being an adjourned term of the said court, at the court-house in the city and county of Salt Lake, in said Territory—

Present, the honorables James B. McKean, chief justice; C. M. Hawley and O. F. Strickland, associate do.; C. M. Hawley, clerk; M. T. Patrick, marshal; C. H. Hempstead, U. S. district attorney.

In the records and proceedings of said court, among other things, are the following:

BRIGHAM YOUNG, TRUSTEE IN TRUST, ETC., APpellant,
vs.
WILLIAM S. GODBE, APPELLEE.

Appeal from the third district court.

On the first day of August, A. D. 1870, came Brigham Young, trustee in trust, &c., by Snow and Hoge, his attorneys, and filed in the
5 clerk's office of this court a transcript duly certified from the district court of the third judicial district of this Territory, in a case lately by said court determined, wherein the said William S. Godbe was plaintiff, and Brigham Young, trustee in trust, &c., was defendant, which transcript is in the words and figures following, to wit:

TRANSCRIPT.

6 Transcript in appeal from the third judicial district court of the Territory of Utah, in the case of William S. Godbe vs. Brigham Young, trustee in trust of the Church of Jesus Christ of Latter-Day Saints.

7 At a district court, begun and held at the court-house in Salt Lake City, in the third judicial district of Utah Territory, on the fourteenth day of July, A. D. 1870, among the records and proceedings of said court, are the following:

WILLIAM S. GODBE
vs.
BRIGHAM YOUNG, TRUSTEE IN TRUST OF THE Church of Jesus Christ of Latter-Day Saints.

On the 26th day of April, A. D. 1870, came the said plaintiff by his attorneys, Marshall and Carter, and filed in the clerk's office of this court, a complaint against the said defendant, which complaint is in the words and figures following, viz:

8 *Complaint.*

In the district court, 3rd judicial district, Territory of Utah, March term, A. D. 1870. Hon. C. C. Wilson, judge.

WILLIAM S. GODBE
against
BRIGHAM YOUNG, TRUSTEE IN TRUST OF THE Church of Jesus Christ of Latter-Day Saints. } Complaint.

William S. Godbe, plaintiff, merchant in the city of Salt Lake, Utah Territory, complains of Brigham Young, as trustee in trust of the Church of Jesus Christ of Latter-Day Saints, a religious association in the Territory of Utah, and for cause, says:

That prior to the 12th day of February, A. D. 1866, in the city of Salt Lake and Territory aforesaid, an account was stated between the plaintiff and the defendant, and upon such statement a balance of ten thousand and twenty dollars and twenty-seven cents was found to be due from said defendant to this plaintiff.

That the said defendant, on May the 30th, A. D. 1868, paid this plaintiff the sum of five thousand dollars in part payment of
9 said account stated, by executing and delivering to this plaintiff his, the said defendant's, note at six months for said sum; that the said defendant has wholly failed, neglected, and refused to pay to this plaintiff the balance due on said stated account, although often requested so to do.

Therefore, plaintiff prays judgement for said sum of ten thousand and twenty $\frac{27}{100}$ dollars, less the said credit of five thousand dollars paid as aforesaid on May 30th, 1868, together with interest on said stated account, at the rate of ten per cent. per annum, from Feb'y 12th, 1866, to May 30th, A. D. 1868, the date of the aforesaid credit, and interest on the balance then remaining due, at ten per cent. per annum from said 30th day of May, A. D. 1868, until paid, (such interest being by way of damages,) together with his costs herein.

(Signed) MARSHALL & CARTER,
Att'ys for plaintiff.

William S. Godbe, plaintiff herein, being first duly sworn, on his oath says that he has read the foregoing complaint, and knows the contents thereof, and that the same is true.

(Signed) W. S. GODBE.

10 Subscribed and sworn to before me this 26th day of April, A. D. 1870.

(Signed) S. A. MANN, *Clk*,
By C. H. FORCE, *Dep'ty*.

The above complaint was filed in this office of the clerk of the third judicial district court of Utah Territory, on the 26th day of April, A. D. 1870.

11 Afterward, on the same day, the clerk issued a summons, and delivered the same to Joseph M. Orr, the United States marshal, to be served, which summons and return is in the words and figures following, viz:

12 *Summons.*

In the district court of the 3d judicial district of the Territory of Utah, county of Salt Lake.

WILLIAM S. GODBE, PLAINTIFF,
vs.
BRIGHAM YOUNG, TRUSTEE IN TRUST OF THE Church of Jesus Christ of Latter-Day Saints, defendant.

The people of the Territory of Utah send greeting to Brigham Young def't.

You are hereby required to appear in an action brought against you by the above-named plaintiff, at the district court of the 3rd judicial district, of the Territory of Utah, at the court-house in Salt Lake City, and to answer said complaint filed therein within ten days (exclusive of the day of service,) of the day of service, on you of this summons if served within this county, or if served out this county, but in this district, within twenty days, or otherwise within forty days, or judgement by default will be taken against you, according to the prayer of said complaint, a copy whereof is herewith furnished; and you are hereby
13 notified that if you fail to appear and answer the said complaint as above required, the said plaintiff will apply to the court for the relief demanded in said complaint.

Given under my hand and the seal of said court, this 27th day of April, A. D. 1870.

(Signed) S. A. MANN, *Clk*,
By C. H. FORCE, *Dep'y*.

I hereby certify and return this writ served, by leaving a true copy of this writ, with copy of complaint, at the usual place of residence of the within-named Brigham Young, with a person of lawful age and usual discretion, in S. L. County, this 27th day of April, A. D. 1870.

(Signed) J. M. ORR,
U. S. Marshal.

Returned and filed April 27th, 1870.

(Signed) S. A. MANN,
By C. H. FORCE.

Afterward, on the 6th day of May, A. D. 1870, came the defendant, by H. Stout, A. Miner, and Snow & Hoge, his attorneys, and filed a demurrer to the complaint, which demurrer is in the words and figures following, to wit:

14 *Demurrer.*

TERRITORY OF UTAH:
3rd judicial district court. Hon. C. C. Wilson, judge.

WILLIAM S. GODBE
vs.
BRIGHAM YOUNG, TRUSTEE IN TRUST OF THE Church of Jesus Christ of Latter-Day Saints.

Now comes the above-named Brigham Young, by H. Stout, A. Miner,

and Snow & Hoge, his attorneys, and demurs to the complaint herein filed, and for cause of demurrer says it does not sufficiently appear in said complaint whether the suit is defendant in his individual capacity or in his capacity as trustee in trust for the Church of Jesus Christ of Latter-Day Saints.

(Signed) H. STOUT.
A. MINER.
SNOW & HOGE,
His Attorneys.

Filed May 6, 1870.
(Signed) S. A. MANN, *Clk*,
By C. H. FORCE, *Dep'y.*

15 Afterwards, on the 9th day of May, A. D. 1870, the court, upon consideration, overruled the demurrer, and the defendant had leave to answer.

And afterwards, on the 21st day of , A. D. 1870, the defendant herein filed in the clerk's office his answer to the complaint, which answer is in the words and figures following, viz:

Answer.

Third judicial district court in and for said Territory. Hon. Charles C. Wilson, judge.

WILLIAM S. GODBE
vs.
BRIGHAM YOUNG, TRUSTEE IN TRUST, &C.

Now comes the said Brigham Young, trustee as aforesaid, and for answer to said complaint, says there was not, on the said 12th day of February, A. D. 1866, nor at any other time, an account stated between said plaintiff and defendant as said trustee in trust, as alleged in said complaint, nor was there found to be due said plaintiff from
16 said defendant, as said trustee, the sum of ten thousand and twenty dollars and twenty-seven cents, or any other sum, as charged in said complaint, and of this he puts himself upon his country.

(Signed) BRIGHAM YOUNG.

TERRITORY OF UTAH,
Salt Lake County:

The above-named Brigham Young, defendant herein, first being duly sworn, deposeth and saith that the facts set forth in the foregoing answer are true tc the best of his knowledge, information, and belief.

(Signed) BRIGHAM YOUNG.

Subscribed and sworn to before me this 21st day of May, A. D. 1870.
(Signed) S. A. MANN,
Per CHARLES H. FORCE, *Dep'y.*

17 *Record of court.*

MAY 9TH, 1870.

GODBE & CO.
vs.
BRIGHAM YOUNG, TRUSTEE IN TRUST, &C.

Defendant's demurrer to complaint overruled.
Exceptions asked and granted by the court.

MAY 23D, 1870.

Plaintiffs gave notice that they would be ready for trial at adjourned term.

18 *Record of court.*

JULY 14TH, 1870.

W'M S. GODBE
vs.
BRIGHAM YOUNG, TRUSTEE IN TRUST OF THE Church of Jesus Christ of Latter-Day Saints.

This case being ready for trial, the following jurors were called, duly empanaled, and sworn to try the same: J. M. Allen, Louis Cohn, Samuel Kahn, S. Maltese, Solomon Seigel, H. Rice, Nelson Lawrence, John Mather, Frederick Auerbach, and B. F. Paxton; and by consent of parties, the case was tried by the above ten jurors.

George Rodford and John H. Latey, witnesses, were called and sworn, to testify on behalf of the plaintiff.

Defendant's counsel objected to receiving any evidence as against the Deseret Irrigating and Canal Company. The court ruled such evidence admissible, provided it should show any connection between the two.

Defendant's counsel objected to reading of certain letters introduced as evidence by pl't'ff. Objection overruled by the court, and
19 letters read.

After which plaintiffs rested, and defendant's counsel moved for a nonsuit, which motion was overruled by the court.

George Q. Cannon was called and sworn to testify on behalf of defendant.

Plaintiff's counsel proposed to introduce in evidence a certain circular letter of defendant, which was objected to by defendant's counsel. The objection was sustained by the court.

Plaintiff's counsel introduced certain letters, as rebutting evidence. Defendant's counsel objected to their being read, and the court ruled that letter No. 1 be admitted.

Defendant's counsel objected to the reading of said letter, which objection was overruled by the court.

Counsel for the parties here rested and Messrs. Marshall and Carter, for plaintiff, and Messrs. Snow & Hoge, for defendant, summed up the case to the jury, who, after receiving their instructions from the court, retired in charge of an officer to deliberate upon their verdict, and after agreeing, returned the following into court, as their verdict:

We, the undersigned jurors, hereby find for the plaintiffs in the sum as claimed by them, viz, the amount of $10,020.27, with interest

20 from the 12th day of February, 1866, up to the date of payment of the $5,000 acknowledged May 30th, 1868, and interest on the remaining balance up to date, at the rate of 10 per cent. per annum. Total amount, $8,382.76.

Salt Lake City, July 14, 1870.

SAMUEL KAHN, *Foreman.*
LOUIS COHN.
FRED. AUERBACH.
S. MALTESE.
N. LAWRENCE.
J. M. ALLEN.
JOHN MATHER.
SOL. SIEGEL.
H. RICE.
B. F. PAXTON.

JULY 15.—Whereupon it is ordered and adjudged by the court that the said plaintiff have and recover against the said defendant the said sum of $8,382.76, together with his costs, taxed at $.

21 *Bill of exceptions.*

TERRITORY OF UTAH:

Third judicial district court. Hon. O. F. Strickland, presiding.

WM S. GODBE *vs.* BRIGHAM YOUNG, SEN'R, TRUSTEE IN TRUST of the Church of Jesus Christ of Latter-Day Saints.	Action upon an account stated.

Be it remembered that on the trial of this cause before the jury the plaintiff, to maintain the issue on his part, placed upon the stand as a witness a person by the name of GEORGE RODFORD, who, after being duly sworn, testified:

That in the month of February, 1866, he was an assistant book-keeper of the plaintiff. That as such he was instructed to make out an account from plaintiff's books against the Deseret Irrigation Canal Company and present the same to Brigham Young, the defendant.

On this statement being made by the witness the defendant,
22 by his counsel, objected to the giving any further testimony in the case relating to the Deseret Irrigation and Canal Company, on the ground that the suit was upon an account stated between the plaintiff and defendant, as trustee in trust, &c., and not between the Deseret Irrigation and Canal Company.

Whereupon the counsel for pl'ffs stated that they would make the connection & show that the def't was such company. The court ruled that the witness might proceed with his statement, subject to be ruled out if such connection was not made. To which ruling the defendant then and there excepted.)

Afterwards the witness testified:

"That he made out the account against the Deseret Irrigating and Canal Company from the plaintiff's books, & on the 12th day of Feb'y, 1866, presented the same to defendant's agent whose name he did not know, at a house on Main street in Salt Lake City, known as the coun-

cil-house; that he, this witness, and this agent checked off the items and found a balance due in favor of plaintiff the sum of $10,020.27 which was an agreed balance between him, the witness, & this agent.

On cross-examination he said he did not know the name of the
23 agent to whom he presented the account; that he went to Mr. Young's office with the account and was there told by some one in authority to present it at the office at the council-house. He then went to the council-house and presented it to the clerk found there; that he did not know whether he was the clerk of the trustee in trust, or whether he acted as clerk of the trustee in trust or the Deseret Irrigation & Canal Comp'y. He knew from the books of the plaintiff that there was such a company as the Deseret Irrigation and Canal Company, but he did not know that their agent was the agent of the trustee in trust, but supposed he was, because he was sent to him from the defendant's office; that he did not know any difference between the Deseret Irrigation & Canal Company and the church. The Deseret Irrigation & Canal Company were so mixed up with the church that he really did not know the difference; that he should know the account presented if he should see it.

(Here an account was presented to the witness, written on bill paper.) The witness, on examination of it, said. "This is the account."

It was headed as follows:

"SALT LAKE CITY, *Nov.* 16, 1865.

"*Deseret Irrigation & Canal Co., in ac. with W. S. Godbe.*"

24 Then followed several sheets of items with their extensions, and at the bottom was the following footings:

$10,010 27

SALT LAKE CITY, *Feb'y* 12, 1866.

After hearing this evidence the court permitted it to go to the jury.

The plaintiff then offered to read to the jury the letters of which the following are true copies, the signatures to which were admitted by counsel for defendant to be genuine:

SALT LAKE CITY, *February* 12, 1870.

W. S. GODBE, Esq., *S. L. City.*

DEAR SIR: Yours of even date has been received, calling my attention to a matter which I supposed had long since been settled. I will cause my clerk to investigate the subject, which he will do without delay. Should it prove that the trustee in trust is owing you the amount you indicate, I regret to say that it is not in my power at present to
25 liquidate it, but I will take the earliest opportunity to do so.

Thanking you for past kindnesses, I remain respectfully,

BRIGHAM YOUNG.

SALT LAKE CITY, *February* 16, 1870.

W. S. GODBE, Esq.

DEAR SIR: Yours of the 14th inst., has been received. Since my last to you my clerk has examined the books of the Deseret Irrigation &

Navigation Canal Company, and reports a balance in your favor of $5,010.27. There is therefore a discrepancy of $10 between your books and ours, a mere trifle, however, which can easily be adjusted when we have a settlement.

Respectfully,

BRIGHAM YOUNG.

SALT LAKE CITY, *February* 23, 1870.

W. S. GODBE, Esq., *S. L. City.*

DEAR SIR; Yours of the 21st inst., also one of even date, have
26 been received. As before stated I regret that it is not in my power to make immediate payment of your account against the trustee in trust. Had I the money personally, I would be pleased to advance it; but as you are well aware, the failure of the U. P. R. R. Co. to pay up in money as agreed has cramped nearly every person concerned.

I enclose you herewith the trustee in trust's note for five thousand & twenty $\frac{27}{100}$ dollars, ($5,020.27,) payable five months after date with interest as specified.

This is the shortest time I can make, consistent with other obligations; still if I find I can do better I will do so.

Respectfully,

BRIGHAM YOUNG.

SALT LAKE CITY, U. T., *April* 20, 1870.

W'M S. GODBE, Esq.

DEAR SIR: Yours of the 19th inst., in relation to an account due from the trustee in trust, has been received.

In my letter to you of the 23d February I stated, in substance, that it was my intention to do the best I could towards making an
27 early settlement, and in accordance therewith I have to inform you that I am now endeavering to procure money, & expect in a a few days to liquidate the whole or a large portion of that indebtedness.

As soon as I receive it you shall hear from me again.

Yours, truly,

BRIGHAM YOUNG.

To the reading of which the defendant, by his counsel, objected for the reason that they did not tend to prove the account stated between the parties as alleged in the complaint, but the court overruled the objection and permitted the letters to be read.

To which ruling the defendant, by his counsel, then and there excepted.

Here the plaintiff rested; which was all the evidence introduced on his part.

The defendant, by his counsel, then moved the court to non-suit the plaintiff for the reason there was no evidence to sustain an action against the defendant as trustee in trust in favor of the plaintiff, but it proved, if anything, an account stated between the plaintiff and the Deseret Irrigation & Canal Co. The court overruled the motion
28 and refused to enter a nonsuit. To which the defendant, by his counsel, then and there excepted.

Afterwards the defendant placed upon the stand as a witness one

GEORGE Q. CANNON, who, upon being sworn, said there was a company in Salt Lake City known as the Deseret Irrigation and Canal Co., of which he, in 1865 and 1866, was secretary, and there was also an assistant secretary by the name of Marcus Holling; that this company kept its office on Main street, Salt Lake City, in what is known as the council-house; that the trustee in trust kept his office at what is known as the president's office, this city. These departments were seperate and distinct from each other, and had a different set of clerks.

Which was all the testimony introduced by the defendant, and here the defendant closed his case.

Afterwards the plaintiff, to rebut the testimony introduced by the defendant, offered to read the letters of which the following are true copies. To the reading of which the defendant, by his counsel, then and there objected for the reason they were not legitimate re-
29 butting testimony; that they were not testimony for any purpose, but, if evidence at all, they were evidence-in-chief and not in rebuttal of anything testified to on the part of the defendant.

OFFICE OF GODBE & CO.,
Salt Lake City, Feb'y 11th, 1870.

B. YOUNG, Esq., *Trustee in trust.*

DEAR SIR: In the spring of 1865, I was presented with a letter signed by yourself, addressed to Mr. W'm Jennings, Messrs. Kimball & Lawrence, myself and others, soliciting a loan on behalf of the trustee in trust, to be used in the construction of the Deseret Irrigation and Canal Co. which was to be refunded as soon as the trustee in trust was in funds.

In response to this request I advanced the sum of $10,020.27 in goods at wholesale and retail. In May, 1868, at my solicitation, you gave me your negotiable note of hand for $5,000.00, at 6 months, on account of this loan. I am now extremely desirous that this matter should be settled without delay, as owing to the great pressure brought to bear upon me in business, in consequence of my present religious views, I experience considerable financial embarassment.

30 I do not mention this as an apology for asking for that which is simply my due, but as a reason why I am necessitated to do so. I saw Mr. Ellerbeck on this matter yesterday and he referred me to a Mr. Jonassen for a settlement, but as the loan was made on your written request, with the express statement that it would be paid "as soon as the trustee *are* in funds," I do not see why I should call upon a Mr. Jonasson for payment.

You will oblige by favoring me with a copy of the letter referred to, (from your letter-press book,) as I omitted to take a copy when the letter was presented, not expecting then that the amount advanced would remain so long unpaid.

Awaiting your reply, I remain,
Very respectfully,

W. S. GODBE.

OFFICE OF GODBE & CO.,
Salt Lake City, April 22, 1870.

Pres't B. YOUNG.

DEAR SIR: Yours of yesterday is received. So far as you inform me that it is your intention to pay "in a few days," the whole or a

31 large portion of your indebtedness to me, it is most satisfactory; but as no reference whatever is made in this letter to the question of interest, the chief point at issue between us, it is far from being so.

In your letter of Feb'y 23rd, to which you refer, you tender note of trustee in trust (which note, however, I have not seen) for the principal only "with interest as specified," which your Mr. Ellebeck informed me was after maturity. I cannot accept such a note or sum in liquidation of this indebtedness, as the interest at 10 per cent. per annum, to which I am clearly entitled, amounts to a considerable sum. I have therefore again to beg you to grant me an immediate settlement. I mean by this an agreement between us as to the actual amount due me from the trustee in trust and an obligation therefor. This done, I am in hopes I shall be able to accede to your wishes as to the time of payment.

With renewed assurance that pressing obligations to others alone compel me to be thus urgent, and awaiting your reply definitely covering the question between us,

I remain, very respectfully,

W. S. GODBE.

32 The plaintiff then placed upon the stand one Thomas C. Armstrong, who testified that he was, in the year 1865 & ever since that time has been, the book-keeper of Kimball & Lawrence, merchants of this city; that they had an account of some ten thousand dollars against the Deseret Irrigation & Canal Company; that Mr. Lawrence, one of the proprietors, took the account and went away with it; in a short time returned stating to this witness that it had been settled by the trustee in trust by giving credit to a certain person on tithing; and that the transaction so appeared on the books of Kimball & Lawrence.

To all of which the defendant then and there objected for the reason the evidence was not in rebuttal, and was therefore illegal. The court overruled the objection, to which the defendant then and there excepted, and the testimony was permitted to go to the jury for what it was worth.

This was all the evidence given in the case.

The following instructions were then asked by plaintiff's counsel and given by the court. To the giving of each and all of them, the defendant then and there excepted.

33 3rd. If the defendant did not object within a reasonable time to an account presented to him, his assent may be presumed, and will support an action upon an account stated.

4th. If when an account is rendered, no objection is made to it, it is to be considered liquidated from the time it is rendered.

The court then instructed the jury, among other things, on his own motion as follows:

That if they find for plaintiff, they will find $5,020.27 with interest on $10,020.27 from the day the account was rendered until the day of the payment of $5,000.00, & from that date to the day of trial on the amount then remaining due.

As these things do not appear of record, the defendant prays the court to sign and seal this his bill of exceptions, and order the same to be made a part of the record in this case, which is accordingly done.

(Signed) O. F. STRICKLAND,
Dist. Judge, 3rd Dist. U. T.

SALT LAKE CITY, *July* 14, 1870.

34 Filed May 21st, 1870.
(Signed) S. A. MANN,
By C. H. FORCE, *Dep't'y.*

Notice to produce letters.

In the district court, 3rd judicial district, Territory of Utah.

W'M S. GODBE
vs.
BRIGHAM YOUNG, TRUSTEE.

To Z. Snow, E. D. Hoge, Hosea Stout, & A. Miner, atty's for def't.

You are hereby notified to produce in court, on trial of the above-entitled cause, the following letters of W'm S. Godbe to the def't, Brigham Young, trust.:

Letter dated Feb'y 11, 1870.
" " " 21, 1870.
" " " 23, 1870.
" " " 25, 1870.
" " April 22, 1870.
" " " 25, 1870, & all others regarding matters in issue.

The said letters to be used as evidence on the part of the plaintiff.

35 (Signed) MARSHALL & CARTER,
Att'ys for Pl'ff.

JUNE 10, '70.

SALT LAKE CITY, *June 11th* 1870.

Service of copy acknowledged.
(Signed) H. STOUT.

Objection filed by def'ts att'y.

Territory of Utah, 3rd judicial district, Hon. O. F. Strickland, judge.

WILLIAM S. GODBE
vs.
BRIGHAM YOUNG, SEN'R, TRUSTEE IN TRUST of the Church of Jesus Christ of Latter-Day Saints.
} Suit upon an account stated.

Now comes the above-named defendant, by H. Stout and Snow & Hoge, his attorneys, and objects to the hearing or further proceeding in this case at the present supposed adjourned term of this honorable court, for the reason that this honorable court was not lawfully adjourned from the 14th day of July of the present year; and for the further reason that the Honorable O. F. Strickland has not been lawfully assigned
36 from the first judicial district to the third judicial district.

(Signed) H. STOUT,
SNOW & HOGE.
Attorneys for Def't.

Filed July 14, 1870.

W'M S. WALKER, *Clk.*

Appeal bond.

Know all men by these presents that we, Brigham Young, sen'r, as principle, and H. B. Clawson & Isaac Groo, as sureties, are held and firmly bound unto William S. Godbe in the sum of eighteen thousand dollars, for the payment of which we, and each of us, bind ourselves, our heirs, and legal representatives, signed with our hands & sealed with our seals this 18th day of July, A. D. 1870.

The condition of the foregoing obligation is such, that, whereas on the 15th day of July, A. D. 1870, the above-named William S. Godbe, by the consideration of the district court within and for the third judicial district of the Territory of Utah, recovered a judgement against the above-named Brigham Young, as trustee in trust for the Church
37 of Jesus Christ of Latter-Day Saints, for the sum of eight thousand three hundred & eighty-two dollars and seventy-six cents, exclusive of costs of suit, upon which the above-bounden Brigham Young, sen'r, has prayed an appeal to the supreme court of said Territory, and has claimed the benefit of a supercedeas.

Now, therefore, if the above-bounden Brigham Young, sen'r, shall well and truly pay the amount of money which may be adjusted against him in the said supreme court, and all costs that may accrue by reason of such appeal, then the obligation shall be void; otherwise to be in full force and virtue in law.

(Signed) BRIGHAM YOUNG. [L. S.]
H. B CLAWSON. [L. S.]
ISAAC GROO. [L. S.]

GEO. REYNOLDS.
HOSEA STOUT.

Approved.
(Signed) M. & C., *Attorneys.*

Filed July 19th, 1870.
(Signed) W'M S. WALKER, *Clk.*

38 In the district court of the third judicial district of the Territory of Utah.

WILLIAM S. GODBE
vs.
BRIGHAM YOUNG, TRUSTEE IN TRUST OF THE Church of Jesus Christ of Latter-Day Saints.

I, W'm S. Walker, clerk of the third judicial district court of Utah Territory, do hereby certify the foregoing to be a full, true, & correct transcript of the papers on file and the record of court in the above-entitled action.

Witness my hand and the seal of said court this 1st day of August, A. D. 1870.

[SEAL.] W'M S. WALKER, *Clerk.*

39 On the back of which was the following assignment of errors:

Now comes Brigham Young, trustee in trust, &c., the plaintiff in error herein, by his attorneys, Snow & Hoge, and says there is *now* in the record and proceedings in this case, which he herein assigns as follows:

1st. The Hon. O. F. Strickland erred in deciding that he had the right to hold said court in absence of the Hon. C. C. Wilson.

2nd. The court below erred in allowing the defendant in error to give evidence of an account against the Deseret Irrigation, Navigation and Canal Co.

3rd. The court below erred in allowing the letters of Brigham Young to W. S. Godbe to be read to the jury as evidence, as they did not prove, or tend to prove, an account stated between the parties.

4th. The court below erred in allowing the letters of William S. Godbe to be read to the jury as evidence, for the reason they were not in rebuttal of anything given in evidence by plaintiff in error, they not being evidence for any purpose, as they were the statements of the plaintiff below not sworn to.

40 5th. The court below erred in allowing the testimony of Armstrong to go to the jury as evidence, it being hearsay, and not matter within his own knowledge, and was wholly irrelavent, and not in rebuttal.

6th. The court below erred in instructing the jury that if the' found for the plaintiff below, they must find $5,020.27, with interest on $10,020.27 from the day the account was rendered until the day of the payment of the $5,000.00, and from that date to the day of trial on the amount then remaining due.

SNOW & HOGE,
Attorneys for Young.

(Indorsed:) William S. Godbe vs. Brigham Young, trustee in trust, &c. Filed in the office of the clerk of the supreme court on the 1st day of Aug., A. D. 1870. C. Myron Hawley, clerk.

41 Supreme Court of the United States.

BRIGHAM YOUNG, TRUSTEE IN TRUST OF THE Church of Jesus Christ of Latter-Day Saints,
vs.
WILLIAM S. GODBE.
} In error.

Know all men by these presents that we, Brigham Young, trustee in trust of the Church of Jesus Christ of Latter-Day Saints, and Feramoz Little and Thomas Taylor, all of the city and county of Salt Lake & Territory of Utah, are held and firmly bound unto the above-named William S. Godbe in the sum of twenty thousand dollars, to be paid to the said William S. Godbe, his executors or administrators: To which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, & administrators firmly by these presents, sealed with our seals and dated this 15th day of March, 1871.

Whereas the above-bound Brigham Young, trustee in trust of the Church of Jesus Christ of Latter-Day Saints, hath prosecuted a writ of error to the supreme court in and for the Territory of Utah:

42 Now, therefore, the condition of this obligation is such that if the above-named Brigham Young, trustee in trust as aforesaid, shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

BRIGHAM YOUNG. [L. S.]
FERAMOZ LITTLE. [L. S.]
THOMAS TAYLOR. [L. S.]

Sealed & delivered in presence of us—
D. McKENZIE.
Z. SNOW.

43 We hereby approve the within bond.
Salt Lake City, March 21, 1871.
MARSHALL & CARTER,
Att'ys for W. S. Godbe.

(Indorsed:) Supreme Court of the United States. In error to the supreme court of the Territory of Utah. Brigham Young, trustee in trust, &c., vs. William S. Godbe. In error. Supers'd'as bond. Filed March 17, 1871. C. Myron Hawley, clerk S. C. of the Territory of Utah.

44 Afterward, on the 15th day of February, A. D. 1871, the same being a regular day of the October term, 1870, the supreme court of the Territory met pursuant to adjournment in the city of Salt Lake. Present, their honors James B. McKean, chief justice; and Cyrus M. Hawley, and O. F. Strickland, associate justices; M. T. Patrick, United States marshal; Cha's H. Hempstead, United States attorney. Attest:

C. MYRON HAWLEY, *Clerk.*

In the matter of the appeal from the district court of the 3rd judicial district, wherein Brigham Young, trustee in trust of the Church of Jesus Christ of Latter-Day Saints, was appellant, and William S. Godbe was appellee:

On this said 15th day of February, A. D. 1871, the same being a day in the said October term, A. D. 1870, aforesaid, the case came on to
45 be heard—Snow & Hoge for appellants; and Marshall & Carter for appellees—and the same having been heard upon briefs, and the arguments of counsel for the respective parties, & after argument was submitted, the court took the case under advisement.

Afterward, to wit, on the 13th day of March, A. D. 1871, the same being a day in the said October term, A. D. 1870, of said court, the following proceedings were had & entered of record, to wit:

In the matter of the appeal from the district court of the 3rd judicial district, wherein Brigham Young, trustee in trust, &c., is appellant, and William S. Godbe is appellee:

On this 13th day of March, A. D. 1871, the same being a day
46 in the October term, A. D. 1870, the opinion of the court in the said case was read by the Honorable Cyrus M. Hawley, associate justice, whereby the judgement of the said district court was affirmed; and, therefore, upon the consideration and judgement of the said supreme court, it was adjudged and ordered that the judgement of the district court of the 3rd judicial district be, and the same is in all respects, confirmed. And it is further considered, and adjudged, and ordered, that the said Brigham Young, trustee in trust, &c., appellant, pay the costs of said appeal, and that execution issue therefor.

47 THE UNITED STATES OF AMERICA:

In the Supreme Court of the United States, in error to the supreme court of the Territory of Utah.

BRIGHAM YOUNG, TRUSTEE IN TRUST OF THE Church of Jesus Christ of Latter-Day Saints,
vs.
WILLIAM S. GODBE.
} In error.

Now comes the said plaintiff, by Snow and Hoge, his attorneys, and says there is a manifest error in the record and proceedings in the court below, in this, viz:

1. The court erred in affirming the judgement of the district court of the third judicial district of Utah Territory, for the reason that there was manifest errors in the record and proceedings of the district court, in which the case originated, as appears in the record in this case, to wit:

2. The court below erred in permitting testimony to be given to the jury of an account stated between the Deseret Irrigation and
48 Canal Co. and the said William S. Godbe upon a count, alleging an account stated between the said William S. Godbe and the said plaintiff in error.

3. The court below erred in permitting to be read to the jury the letters of this plaintiff to the defendant in error, dated respectively Feb. 12, Feb. 16, Feb. 23, and April 19, each in the year 1870, without first introducing the letters to which they were an answer, and for the reason they did not tend to prove the account stated, as alleged in the complaint.

4. The district court erred in refusing to nonsuit the plaintiff below as prayed by this plaintiff.

5. Letters, purporting to have been written by one party to a suit, and to have been directed to the other party, are not evidence in the case for any purpose, without proof of their having been sent to and received by such party, nor even then unless followed by the further proof of an answer thereto as an admission of the facts, or some of the facts, therein stated.

The court therefore erred in admitting, in evidence, the letters of the said William S. Godbe to the plaintiff in error, dated respectively Feb'y 11th, and April 22, 1870, as shown in the bill of exceptions.

49 6. The court erred in permitting the letter written by the defendant in error to the plaintiff in error, dated Feb'y 11, 1870, without the production of the letter therein referred to, or accounting for its absence.

7. The court erred in permitting the testimony of Mr. James C. Armstrong to be given to the jury, the same being irrelevant and hearsay testimony.

8. There is no law in the Territory of Utah, prescribing a rate of interest in transactions like the one that is the subject of this suit.

It is not therefore recoverable, there not having been any contract, express or implied, to pay interest, proven. The court therefore erred in instructing the jury what to find on this subject.

There are other manifest errors in the record. The plaintiff in error therefore prays that said judgement of the supreme court of the Territory of Utah may be reversed, and that a mandate may issue from this honorable court directing the said supreme court of said Terri-

50 tory to reverse the judgement of the district court, and remand the case for further proceedings.

SNOW & HOGE,
Att'ys for Pl'ff in Error.

(Indorsed:) Supreme Court of the United States. Brigham Young, trustee, &c., vs. William S. Godbe. Assignment of errors. Filed in the office of the clerk of the supreme court for the Territory of Utah, on this 17th day of March, A. D. 1871. C. Myron Hawley, cl'k.

51 UNITED STATES OF AMERICA,
Territory of Utah:

Supreme court.

I, C. Myron Hawley, clerk of the supreme court of the United States in and for the Territory of Utah, certify that in obedience to the commands of the writ of error hereto attached, I return said original writ with the citation therein issued, containing the acknowledgement of service therein endorsed, and a transcript of the record in the writ of error and proceedings of the case mentioned.

And I further certify that the foregoing is a full, complete, and correct transcript of the record and proceedings in said case on file in my office, and a true copy of the assignment of errors, and a copy of the supersedeas bond also on file in my office.

In testimony hereof I have hereunto set my hand and affixed the seal of said court, in Salt Lake City, in said Territory, this 14th day of November, A. D. 1871.

[SEAL.]

C. MYRON HAWLEY, *Clerk*,
By BENTHAM FABIAN, *Dep'y.*

(Indorsement on cover:) No. 422. Brigham Young, trustee in trust of the Church of Jesus Christ of Latter-Day Saints, plaintiff in error, vs. William S. Godbe. Utah Terr'y sup. c't. Filed 27 November, 1871.

REC. 422—2